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RECOMMENDATIONS FO THE COMMITTEE

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PURPOSE AND SUMMARY

The Digital Television Transition Act of 2005, which is Subtitle D of Title III of the Committee Print implementing the Committee's reconciliation instructions, expedites the digital television (DTV) transition while helping consumers to continue to use their analog televisions, and frees spectrum for public safety and commercial use. The bill does so by (1) setting December 31, 2008, as the firm deadline for the end of analog broadcasts by full-power television broadcast stations; (2) requiring each full-power television broadcast station to return one of the two six-megahertz channels the station currently uses for analog and digital broadcasts; (3) clearing 24 megahertz of spectrum in the 700 megahertz (MHz) band for use by public safety officials; and, (4) auctioning 60 megahertz of spectrum in the 700 MHz band for the provision of wireless broadband and other commercial services.

BACKGROUND AND NEED FOR LEGISLATION

To facilitate the DTV transition, Congress authorized the Federal Communications Commission (the Commission) in 1996 to give each full-power television broadcast station an extra channel of spectrum to broadcast in digital format while continuing to broadcast in analog format on its original channel. Each broadcaster was supposed to eventually return either the original or additional channel and broadcast exclusively in digital format on the remaining channel. (*see* Public Law No. 104-104, sec. 201)

In 1997, Congress earmarked for public safety use 24 MHz of the spectrum the broadcasters are supposed to return. Congress designated the rest of the spectrum to be auctioned for advanced commercial applications, such as wireless broadband services. Congress set December 31, 2006 as the deadline for broadcasters to return the spectrum and to cease broadcasting in analog format. (*see* Public Law No. 105-33, sec. 3002-04)

A loophole, however, allows broadcasters in a market to delay the return of the spectrum until more than 85 percent of television households in that market have at least one television with access to digital broadcast channels using a digital television receiver, a digital-to-analog converter box, or cable or satellite service. (*see id*., sec. 3003) Experts forecast that it may take many more years to meet the 85-percent test nationwide.

The Digital Television Transition Act of 2005 would eliminate the 85-percent test and set a firm deadline of December 31, 2008. Doing so would close the loophole, making possible the nationwide clearing necessary to complete the DTV transition and free the spectrum for public safety use. Some police officers, firefighters, and rescue personnel already have equipment to communicate over the spectrum the broadcasters are supposed to return, and are anxiously awaiting the availability of the channels. Many more public safety officials cannot purchase equipment or begin planning without a date certain for the availability of the spectrum. Five years to the day before September 11, 2001, an advisory committee report to the Commission noted that public safety officials desperately need more spectrum to better communicate with each other in times of emergency. The National Commission on Terrorist Attacks Upon the United States (9/11 Commission) has specifically recognized the importance of clearing for public safety use the spectrum in the 700 MHz band, especially following the terrorist attacks on the World Trade Center and the Pentagon.

The certainty of a nationwide firm deadline for the end of the DTV transition will also enable consumers, industry, and government to take the necessary steps to make the transition as smooth as possible. Under existing law, once a market meets the 85-percent penetration test, the remaining 15 percent of households in the market would lose access to television broadcast programming unless those households obtain a digital television receiver, a digital-to-analog converter box, or cable or satellite service. (*see* 47 U.S.C. 309(j)(14) (2004)) Determining when the 85-percent test in current law has been met in a particular market would be extremely difficult for the Commission to accomplish. Moreover, because no one can predict precisely when any market will meet the 85-percent test, and because different markets will meet the test at different times, consumers, industry, and government cannot adequately plan on either a local or nationwide basis.

With a firm deadline, government, industry, and consumer groups can develop concrete plans for consumer education. Manufacturers can build large quantities of low-cost digital-to-analog converter boxes for consumers who wish to continue using their analog televisions with over-the-air antennas. Clearing the spectrum on a unified, nationwide basis

will also enable the government to maximize the revenue from the auction.

The firm deadline will have little impact on most television households. Of the 108.41 million U.S. television households in June 2004, the Commission reports that 92.3 million, representing 85.14 percent, subscribed to a multichannel video programming distribution (MVPD) service, such as those offered by a cable or satellite operator. (*See* Media Bureau Staff Report Concerning Over-the-Air Broadcast Television Viewers, MB Docket No. 04-210, at para. 7 (Feb. 28, 2005)) The number of MVPD households has slowly but generally increased in recent years, (*see id.)*, suggesting that the number will be even higher by December 31, 2008. These households do not depend on over-the-air transmissions of broadcast programming. Allowing cable and satellite operators to offer digital broadcasts in both digital and analog-viewable formats will enable these households to continue using analog televisions if they wish to do so, without requiring television stations to continue to broadcast both digital and analog signals over the air.

Only 14.86 percent of U.S. households, or 16.11 million, relied exclusively on over-the-air transmission as of June 2004 according to the Commission. (see *Id.)* As the MVPD penetration number increases, the number of exclusively over-the-air households will drop. Some of the exclusively over-the-air homes will also likely purchase digital televisions that enable them to watch digital over-the-air broadcasts. Indeed, in 2006, the sale of digital over-the-air television receivers will eclipse the sale of analog over-the-air television receivers 23.97 million to 14.76 million, an almost 2 to 1 margin, according to the Consumer Electronics Association (CEA). CEA estimates that consumers will buy approximately 97.59 million digital over-the-air receivers from 2006 to year-end 2008. Thus, by December 31, 2008, CEA projects that exclusively over-the-air households will represent only 6.8 percent of television households. The number of analog televisions in those homes, and the number of analog televisions in cable and satellite homes used to watch broadcast programming over the air will be 24.42 million combined. CEA based those projections on a 2005 survey it designed asking consumers what types of televisions they have, what they use televisions for, how many of the televisions are connected to cable or satellite service, and what the consumers plan to do in the future.

To help consumers who wish to continue receiving broadcast programming over the air using those unconnected, analog-only televisions, the bill authorizes the National Telecommunications and Information Administration (NTIA) to create a digital-to-analog converter box assistance program. Under the program, the NTIA may use up to $990 million of the spectrum auction revenues for the distribution of up to two $40 coupons per U.S. household. Consumers may use the coupons toward the purchase of eligible digital-to-analog converter-boxes. The NTIA may use up to $160 million of the $990 for administrative costs. Basic digital-to-analog converter boxes are expected to cost in the neighborhood of $60 by the start of 2008. Such boxes, and over-the-air digital televisions in general, can work with the same types of antennas consumers currently use for analog over-the-air broadcasts.

The National Association of Broadcasters (NAB) contends, based on a less recent 2004 study commissioned by NAB, that there are 73 million unconnected analog televisions. This estimate does not appear to take into account, however, that many unconnected televisions are spare or retired sets that are never turned on, or are used exclusively with VCRs, DVD players, or video game systems. It also assumes that there are 21 million exclusively over-the-air analog households, a figure that exceeds the Commission estimate by nearly 5 million. Nor does the NAB estimate appear to take into account the projected purchases of digital television receivers or the growth in MVPD households. Although the General Accountability Office (GAO) has cited the 73 million figure, the GAO admitted in a May 26, 2005, hearing before this Committee's Subcommittee on Telecommunications and the Internet that the GAO was relying on the same survey data that NAB had purchased, and had not conducted its own study. Having evaluated the Commission, CEA, and NAB data, the Congressional Budget Office (CBO) has informed the Committee that the legislation's converter-box program is adequately funded to meet the projected demand for coupons, which CBO estimates to be approximately 20 million. Even if NTIA spends the full $160 million on administrative costs, the remaining $830 million of the $990 million in converter-box program proceeds will fund 20,750,000 coupons. And each additional $40 the NTIA does not spend on administration is another coupon it can make available to consumers.

In addition to generating the revenue necessary to fund the converter-box program, setting a firm deadline will also bring consumers and the economy the benefits of the DTV transition faster. DTV offers sharper and wider pictures, and CD-quality sound. Even consumers with analog televisions connected to a converter box or cable or satellite service will receive better service than they did before the transition. Once the transition is complete, broadcasters can redirect their resources away from operating two stations—one analog and one digital—and toward producing programming that capitalizes on the advanced features of digital transmissions. Manufacturers can also increase the production of televisions and other consumer electronics equipment that takes advantage of these features, which will also drive down prices. The cleared spectrum can be used to bring cutting-edge wireless services to public safety officials and consumers. This spectrum travels greater distances at lower costs, and more-easily penetrates buildings and foliage. Consequently, the 700 MHz band is ideal to sustain mobile broadband services not only to urban areas, but especially to rural areas, which currently have very few cost-effective broadband options. The increase in DTV programming, services, and equipment, and the provision of products and services that use the cleared spectrum, will improve America's global competitiveness and result in significant investment and innovation, boosting the U.S. economy and creating new jobs.

HEARINGS

The Subcommittee on Telecommunications and the Internet held 3 hearings on the digital television transition during the first session of the 109th Congress. The Subcommittee received testimony in an oversight

hearing on February 17, 2005, regarding the expected costs of digital-to-analog converter boxes and various potential digital-to-analog converter-box programs. Testifying were: Jong Kim, Vice President, Public Affairs and Communications, LG Electronics USA, Inc.; Mark L. Goldstein, Director, Physical Infrastructure Issues, Government Accountability Office; Michael S. Willner, President and Chief Executive Officer, Insight Communications; and, K. James Yager, Chief Executive Officer, Barrington Broadcasting Co., LLC.

The Subcommittee received testimony in an oversight hearing on March 10, 2005, regarding consumer education efforts for the DTV transition. Testifying were: Lavada E. DeSalles, Member, Board of Directors, American Association of Retired Persons; Manuel Mirabal, Founder and Co-Chair, Hispanic Technology and Telecommunications Partnership; David H. Arland, Vice President, Communications and Government Affairs, Thomson Connectivity Business Unit; and, Leonard H. Roberts, Chairman and Chief Executive Officer, Radio Shack Corporation.

The Subcommittee received testimony in a legislative hearing on May 26, 2005, regarding a staff draft of DTV transition legislation. Testifying were: Rick Chessen, Chair, DTV Task Force, Federal Communications Commission; Mark L. Goldstein, Director, Physical Infrastructure Team, Government Accountability Office; Gary Shapiro, President and Chief Executive Officer, Consumer Electronics Association; K. James Yager, Chief Executive Officer, Barrington Broadcasting Company, LLC; Kyle E. McSlarrow, President and Chief Executive Officer, National Cable & Telecommunications Association; Manuel Abud, Vice President and General Manager, Telemundo Los Angeles; W. Alan McCollough, Chairman and Chief Executive Officer, Circuit City Stores, Inc.; Patrick Knorr, Vice Chairman, Sunflower Broadband; Steve Souder, Director, Montgomery County, Maryland, 911 Emergency Communications Center; Gene Kimmelman, Senior Director of Public Policy, Consumers Union; and, Peter Pitsch, Communications Policy Director, Intel Government Affairs.

COMMITTEE CONSIDERATION

On Tuesday, October 26, 2005, the Committee met in open markup session and approved the Committee Print entitled Digital Television Transaction Act of 2004, amended, by a record vote of 33 yeas and 17 nays. A motion by Mr. Barton to transmit the recommendations of the Committee, and all appropriate accompanying material including additional, supplemental, or dissenting views, to the House Committee on the Budget, in order to comply with the reconciliation directive included in section 201 (a) of the Concurrent Resolution on the Budget for Fiscal Year 2006, H.Con.Res. 95, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974, was agreed to by a voice vote.

COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following are the recorded votes taken on amendments offered to the measure, including the names of those Members voting for and against. A motion by Mr. Barton to transmit the recommendations of the Committee, and all appropriate accompanying material including additional, supplemental, or dissenting views, to the House Committee on the Budget, in order to comply with the reconciliation directive included in section 201 (a) of the Concurrent Resolution on the Budget for Fiscal Year 2006, H.Con.Res. 95, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974, was agreed to by a voice vote.

[Insert Votes Here]

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee held and oversight hearings and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goals of the Digital Television Transition Act of 2005 are to expedite the benefits of digital television for American consumers while preserving their ability to continue using their analog televisions, to clear spectrum for critical public safety and commercial uses, to improve America's global competitiveness, to spur investment and innovation, and to stimulate economic growth and create new jobs.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee adopts as its own estimate prepared by the Director of the Congressional Budget Office concerning new budget authority. This estimate is done to comply with the reconciliation directive included in section 201 (a) of the Concurrent Resolution on the Budget for Fiscal Year 2006, H.Con.Res. 95, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

[Insert CBO estimate here]

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 3401. Short title.

Section 3401 of the bill establishes the short title, the "Digital Television Transition Act of 2005."

Section 3402. Findings.

Section 3402 of the bill sets out the congressional findings underlying the bill.

Section 3403. Analog spectrum recovery: hard deadline.

Section 3403 of the bill amends section 309(j)(14) of the Communications Act to (1) eliminate the 85-percent penetration test in current law; (2) establishes December 31, 2008, as the firm date for the end of analog broadcasts by full-power television broadcast stations; (3) directs the Commission to issue a report and order by December 31, 2006 on the digital television table of channel allotments; and, (4) gives the Commission until July 31, 2007 to complete any and all reconsideration of that report and order; and instructs the Commission to submit reports to Congress every six months between January 31, 2006 and July 31, 2007 on the coordination of digital channel allotments with Canada and Mexico. To minimize disruption while broadcasters prepare their digital

facilities for digital-only broadcasting, section 3403 of the bill also prohibits the Commission from making further changes in the channel allocations between July 31, 2007 and January 1, 2009, unless doing so is necessary for reasons of public safety or necessary to prevent a delay in the end of analog broadcasting by full-power television stations. Section 3403 instructs the Commission to terminate all analog full-power television station licenses by January 1, 2009, the date by which full-power broadcast television stations must vacate one of their six-MHz channels.

Section 3403(b)(4) of the bill directs the Commission to issue a final order in the matter of Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04-186). In this matter, the Commission proposes to allow unlicensed devices to operate in the "white spaces" where the spectrum allocated to broadcast television stations is not being used. The Committee recognizes the value of finding additional spectrum for unlicensed devices to meet the growing consumer demand for robust wireless broadband environments in the home, office, and public spaces. The Committee also notes, however, that broadcasters will be deploying and modifying their broadcast facilities as the nation completes the digital television transition. The Committee therefore expects the Commission to carefully evaluate whether the presence of unlicensed devices operating in the broadcast television band will produce harmful interference to television stations broadcasting in that band. In order to properly evaluate this matter, the Committee expects the Commission to conduct thorough laboratory and field testing of unlicensed devices to measure the potential for harmful interference and determine whether such devices should be permitted to operate in the television band, and, if so, what safeguards should be imposed to avoid any such interference. The Committee strongly urges manufacturers of such unlicensed devices to make prototypical devices available on a timely basis to the Commission for testing.

Section 3404. Auction of recovered spectrum.

Section 3404 of the bill directs the Commission to start no later than January 7, 2008, the auction of the spectrum that the full-power stations must vacate in the 700 MHz band. Section 3404 also makes the Commission's auction authority permanent. That auction authority would otherwise expire on September 30, 2007. *(see* 47 U.S.C. 309(j)(11)) The section also requires the Commission to initiate an ongoing inquiry into the participation of women, minorities, and small businesses in spectrum auctions, and to submit a report to Congress on the inquiry at least every two years.

Section 3405. The Digital Television Conversion Fund.

Section 3405(a) of the bill places (1) $990 million of the proceeds from the auction of spectrum in the 700 MHz band vacated by the broadcasters into a digital television converter-box fund; (2) $500 million of the proceeds into a fund to assist first responders in the acquisition and deployment of interoperable radio communications equipment tuned to

the public safety channels in the 700 MHz band; (3) $30 million into a fund to temporarily assist broadcasters in New York City harmed by the destruction of the World Trade Center; and, (4) $3 million into a fund to temporarily assist low-power television stations with digital-to-analog conversions. The remainder of the proceeds is placed in the general fund of the Treasury.

Section 3405(b) adds new section 159 to the NTIA Organization Act, which governs the converter-box program. Section 159(a) authorizes the Assistant Secretary of NTIA to implement and administer the converter-box program, under which U.S. households may obtain up to two coupons toward the purchase of converter boxes.

Section 159(b) of the NTIA Organization Act directs the Assistant Secretary to promulgate regulations governing (1) the content and distribution of coupon request forms and coupons; consumer redemption of, and retailer reimbursement for, the coupons; (2) the types of converter boxes that shall be eligible for purchase with a coupon; (3) certification and education of retailers involved in the program; and, (4) consumer and retailer appeals. Each household in the United States may receive up to two $40 coupons toward the purchase of converter boxes. NTIA may use up to $160 million for administration, and up to $990 million total for the program.

Section 159(b)(2)(B) allows the Assistant Secretary to enlist the assistance of non-governmental entities, including religious organizations, in the distribution of request forms if the Assistant Secretary determines that such assistance would make the program more successful. The Committee does not intend for the Assistant Secretary to enlist such help, however, if the Assistant Secretary determines that doing so would make administration of the program more difficult, such as by making it hard to ensure the forms contain the required information, or by confusing consumers about whether particular forms are valid. To the extent that the Assistant Secretary does seek such assistance, the Committee intends for the Assistant Secretary to establish regulations to ensure that the non-governmental entities, and the consumers to whom they distribute request forms, participate in the program in a way that is consistent with the program's objectives and requirements.

Section 159(c) requires the Assistant Secretary to protect consumer privacy in the use of information provided in conjunction with participation in the program.

Section 159(d) authorizes the Assistant Secretary to use the monies in the Digital Television Conversion Fund for administration of the program. To enable the Assistant Secretary to begin designing and implementing the program as soon as possible, Section 159(d) allows the Assistant Secretary to borrow funds from the Treasury prior to the deposit of the auction proceeds.

To promote energy conservation while ensuring that inexpensive converter boxes are available to consumers, section 159(e) sets an energy standard requiring converter-boxes eligible for the program to use no more than 9 watts in the passive standby mode. The Secretary of Energy shall enforce the standard. The subsection also preempts the application of State energy output, usage, or consumption standards to digital-to-analog converter boxes. The potential for separate State statutes creates

uncertainty in the planning, manufacture, and sale of digital-to-analog converter boxes. The Committee intends this provision to reduce the cost of producing converter boxes while at the same time promoting energy conservation.

Section 159(f) gives NTIA 9 months from enactment to promulgate the regulations necessary to implement the converter-box program.

Section 159(g) defines "digital-to-analog converter-box," "household," and "standby passive mode."

Section 3406. Public Safety Interoperable Communications Fund.

Section 3406 of the bill adds new section 160 to the NTIA Organization Act, which directs NTIA to use up to $500 million from the Public Safety Interoperable Communications Fund to implement a grant program to assist State and local public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that utilize, or enable interoperability with communications systems that can utilize, the twenty-four MHz of spectrum in the 700 MHz band originally allocated to public safety in 1997 for radio communications. Under new section 160, the term "interoperable communications systems" is defined as "communications systems which enable public safety agencies to share information amongst local, state, and Federal public safety agencies in the same area via voice or data services." The grant program requires public safety agencies to provide not less than a 20 percent match in order to be eligible for a grant, and limits grants to 3 years in duration. The Committee intends that grants under this section may be used for the acquisition costs associated with designing an interoperable communications system so that the system is properly engineered based upon the topography, population density, or other characteristics of the area in which the system will operate. The Committee notes that there is a diverse array of technological and engineering solutions that enable interoperable communications systems.

Section 3407. NYC 9/11 Digital Transition Fund.

Section 3407 of the bill adds new section 161 to the NTIA Organization Act, which makes up to $30 million from the NYC 9/11 Digital Transition Fund available to New York City broadcast television stations to construct temporary digital broadcast facilities to boost their signals until permanent facilities can be installed on the Freedom Tower.

Section 3408. Low-power television transition provisions.

Section 3408(a) of the bill amends section 337(e)(1) of the Communications Act to (1) clarify that full-power television stations, not low-power television stations operating in a secondary capacity, must vacate channels 60 to 69; (2) amends section 337(e)(2) to make clearer that Class A television stations may not operate on channels 52 to 69; and, (3) amends section 336(f) to make clearer that low-power television

stations other than Class A stations may continue to operate on channels 52 to 59 in a secondary capacity.

Section 3408(b) of the bill amends section 309(j)(14)(A) of the Communications Act to allow low-power television stations to continue to broadcast in analog format after December 31, 2008.

Section 3408(c) of the bill amends section 336(f)(4) to clarify that the Commission may, but is not required to, grant any low-power broadcast television station—including Class A stations, television translator stations, and booster stations—a second channel for purposes of facilitating the DTV transition for low-power broadcast television stations.

Section 3408(d) of the bill adds new section 162 to the NTIA Organization Act. New section 162 makes up to $3 million from the Low-Power Digital-to-Analog Conversion Fund available to low-power broadcast television stations. The low-power stations may use those funds toward the cost of devices to convert the digital signals of their corresponding full-power stations so that the low-power stations can continue broadcasting in analog format until the Commission completes the DTV transition for low-power stations. The Committee understands that these devices cost approximately $400.

Section 3408(e) of the bill gives the Commission until December 31, 2008, to issue a report and order specifying how and under what timeline the Commission will complete the DTV transition for low-power stations.

Section 3409. Consumer education regarding analog televisions.

Section 3409(a) of the bill amends section 303 of the Communications Act to give the Commission authority to create certain consumer education regulations regarding analog-only television receivers that have, or are sold in a bundle with, display screens.

Section 3409(b) of the bill amends section 303 of the Communications Act to spell out those regulations. New section 303(d)(1) requires that, within 180 days of enactment, manufacturers begin labeling analog-only receivers that have, or are sold in a bundle with, display screens. New section 303(d)(2) requires that, within 45 days of enactment, retailers begin placing signs near analog-only receivers that have, or are sold in a bundle with, display screens. New section 303(d)(3) specifies the content of the labels and signs, which are intended to inform consumers about the impact the firm DTV transition deadline will have on the performance of analog-only television receivers. New section 303(d)(4) requires the Commission and the NTIA to begin a consumer outreach program to educate consumers about the DTV transition. The Committee expects the Commission and the NTIA to pay particular attention to educating non-English speaking households, such as those in states that border Mexico, to ensure that these consumers are aware of the transition and the converter-box program that is available to them. New section 303(d)(5) requires television broadcasters to run public service announcement and MVPDs to mail billing inserts that contain specific language educating consumers about the DTV transition. New section 303(d)(6) requires the Commission and the

NTIA to submit reports to Congress regarding their consumer outreach efforts, as well as the efforts of broadcasters, cable and satellite operators, consumer electronics manufacturers, retailers, and consumer groups.

Section 3409(c) of the bill requires the Commission to accelerate to March 1, 2007, from July 1, 2007, the deadline by which broadcast television receivers that have, or are sold in a bundle with, display screens sized 13- to 24-inches must be able to receive digital broadcast programming over the air. This section also prohibits the Commission from extending or otherwise delaying the schedule for larger television receivers to incorporate such capability.

Section 3410. Additional provisions.

Section 3410(a) of the bill creates new section 614(b)(11) of the Communications Act (47 U.S.C. 534(b)(11)). New section 614(b)(11) addresses how cable operators will provide programming to their subscribers with analog and digital televisions. This section applies to the programming of commercial and non-commercial full-power broadcast television stations that are transmitting exclusively in digital format and that rely exclusively on the must-carry provisions of the Communications Act to obtain cable carriage. New section 614(b)(11) does not apply to the programming of the vast majority of stations, which rely on retransmission consent agreements. The carriage and format of such programming will be governed by the terms of those agreements. In addition, the programming of full-power broadcast stations that transmit any programming in analog format in a local market and that rely on the must-carry rules will continue to be entitled to carriage in that market of only the analog transmissions of their primary video and, to the extent technically feasible, program-related material.

New section 614(b)(11)(A) creates the general rule that, once a television station begins broadcasting exclusively in digital format in a local market, a cable system in that market shall carry the station's primary video stream and program-related material in the format the station transmits it. To qualify for such carriage, the station must be relying on either the commercial or non-commercial must-carry provisions of sections 614 and 615. In other words, if such a station broadcasts its primary video stream and program-related material in high-definition format, the cable system must offer that stream to the cable system's subscribers in high-definition format. If the station transmits the stream in standard-definition format, the cable system must offer the stream to cable customers in standard definition format. New section 614(b)(11)(A)(ii) prohibits a station from invoking 614(b)(11)(A) with respect to some of the station's programming, however, while demanding compensation for the provision of other programming transmitted by the station.

New section 614(b)(11)(B) allows a cable system to offer the primary video stream and program-related material of a must-carry station in additional analog or digital formats other than the format in which the station transmits it, so long as the cable system carries the stream and program-related material in the format or formats required by section 614(b)(11). This provision ensures that the cable system can

offer the broadcast station's primary video stream and program-related material in formats that the cable system's subscribers can view. For example, if the station is transmitting in high-definition format, this provision allows a cable system to convert the primary video stream and program-related material to an analog-viewable format for a subscriber who does not have a digital television, and who otherwise would not be able to view the programming over the cable system. New section 614(b)(11)(B)(i) prohibits the cable system from otherwise materially degrading the primary video stream and program-related material in the conversion process.

New section 614(b)(11)(C) creates some exceptions to the general rule of new section 614(b)(11)(A). Those exceptions operate until January 1, 2014. As discussed above in the context of new section 614(b)(11)(B), a cable subscriber with an analog television will not be able to view over the cable system a broadcast station's digital transmission unless the cable system converts that transmission to an analog-viewable format. To ensure that cable subscribers do not lose access to must-carry content, new section 614(b)(11)(C)(i)(I) requires a cable system to offer the primary video stream and program-related content in an analog-viewable format as well as in a digital-viewable format. As discussed below in connection with new section 614(b)(11)(D)(i), the cable operator can do this by carrying that content in both analog and digital formats, or by carrying it only in digital format and using set-top boxes to convert the content to an analog-viewable format for subscribers with analog televisions. For that reason, the Committee uses the word "offer" in many parts of new section 614(b)(11) rather than the word "carry."

Smaller-capacity cable systems with an activated capacity of 550 MHz or less, however, may not be able to offer the primary video stream and program-related material in both analog and standard-definition digital formats. Consequently, new section 614(b)(11)(C)(ii) allows these cable systems to offer the primary video stream and program-related material solely in an analog-viewable format. These exceptions end January 1, 2014, by which time large and small cable systems will have had the opportunity to increase their capacity or find other ways to increase efficiency.

The Committee emphasizes that the conversion of content from high-definition to standard-definition or analog format is meant only as a transitional measure. It should also be observed that the vast majority of high-definition content is carried pursuant to retransmission consent agreements, and so is not subject to these must-carry provisions regarding conversion. Such content will be carried in the format or formats required by the retransmission consent agreements. Moreover, only consumers with high-definition televisions will be able to watch high-definition content in the first place. Many, if not most, high-definition televisions will have digital tuners, especially in light of the tuner mandate, which the bill accelerates in section 3409(c). Consequently, these consumers that own high-definition televisions will likely be able to watch high-definition content over the air even if a cable operator converts the stream to standard-definition or analog format.

New section 614(b)(11)(D)(i) allows a cable operator to perform any conversion permitted or required by new section 614(b)(11) anywhere from the cable head-end to the customer premises. For example, an operator could perform a conversion from digital to analog format at its head-end, in which case every subscriber would receive that content in analog-format, regardless of the format in which the content was broadcast and regardless what type of television the subscriber possessed. To also provide that content in digital format to its subscribers, the cable operator would then need to dedicate additional space on the system for a digital version of the same content. Alternatively, the cable operator could carry the content in digital format, and then use cable set-top boxes in the homes of subscribers with analog televisions to convert the content to an analog-viewable format. In this way, the cable operator could avoid the need to carry the same content in multiple formats, but would then need to deploy set-top boxes. The Committee intends to leave to the cable operator's business judgment how best to accomplish the permitted and required conversions.

New section 614(b)(11)(D)(ii) allows a cable operator to use switched digital video technology to accomplish the conversions and transmissions permitted or required by new section 614(b)(11). Today, cable operators generally provide all the content they offer to all their subscribers, whether or not those subscribers are actually watching the content at a given moment. Switched digital video is an emerging technology that enables a cable operator to provide specific content only to those subscribers watching the content, which saves capacity. This provision also applies with respect to other transmission technologies. While nothing in the Communications Act or the Commission's rules prohibits a cable operator's use of switched video or other technologies to transmit any broadcast or non-broadcast video signals, the Committee included this provision in the bill to avoid any question as to whether such technologies were permissible within the statutorily-created and defined must-carry framework.

New section 614(b)(11)(E) is intended to clarify that the mere act of converting content to another format as permitted or required by new section 614(b)(11) shall not be treated as a violation of the prohibition against material degradation. Conversions necessary for the consumer to view the content and required by new section 614(b)(11)(C), such as conversions from a digital format to an analog format for consumers with analog televisions, do not degrade the content. Indeed, without such conversion, the consumer loses the ability to view the content at all. Similarly, conversions permitted by new section 614(b)(11) shall not, as a matter of law, be deemed a material degradation. Other alterations, however, whether or not made in conjunction with a conversion, may still constitute an impermissible degradation if they perceptibly affect the picture or sound quality the consumer receives.

New section 614(b)(11)(F) is intended to clarify that the requirement mentioned in section 614(b)(11) to carry program-related material is still contingent on the technical feasibility of such carriage, as it is under current law.

Section 3410(b) of the bill requires that any television broadcast station's primary video stream and program-related material that a cable

operator provides in an analog-viewable format shall be offered on the cable basic tier. It also provides that, once a local broadcast station is transmitting exclusively in digital format, any of that television broadcast station's primary video stream and program-related material that the cable operator provides in a digital-viewable format shall also be offered on the cable basic tier.

Section 3410(c) of the bill adds new section 338(l) of the Communications Act. New section 338(l) addresses how satellite operators will provide programming to their subscribers with analog and digital televisions. The provision applies to the programming of commercial and non-commercial full-power broadcast television stations that are transmitting exclusively in digital format and that rely exclusively on the must-carry provisions of the Communications Act to obtain satellite carriage. The requirements are comparable to those that section 3410(a) creates for cable operators, except that new section 338(l) imposes the obligations in a manner consistent with the market-by-market nature of satellite service. The programming of full-power broadcast stations that transmit any programming in analog format in a local market and that rely on the must-carry rules will continue to be entitled to carriage in that market of only the analog transmissions of their primary video and, to the extent technically feasible, program-related material. New section 338(l) does not apply to the programming of the vast majority of stations, which rely on retransmission consent agreements. The carriage and format of such programming will be governed by the terms of those agreements.

New section 338(l)(1) establishes the general rule that, once a television station requesting carriage under section 338 begins broadcasting exclusively in digital format in a local market, a satellite carrier transmitting the digital signal of any other local television station in that local market shall carry the primary video stream and program-related material of the requesting carrier in that market without material degradation. New section 338(l)(1) also includes the same requirement created in the section 3010(a) cable provisions that the requesting station not require compensation from that satellite carrier for carriage in that market of any other local broadcast programming transmitted by that station in that market.

New section 338(l)(2) requires the satellite carrier to carry in a local market the primary video stream and program-related material in the format a local broadcaster transmits the stream if the satellite carrier is carrying in that market and in that format the primary video stream and program-related material of any other local broadcaster. In other words, under the general rule, if a satellite carrier is carrying in high-definition format the primary video stream and program-related material of any local broadcaster in a local market, it must carry in high-definition format the primary video stream and program-related material of any local broadcaster transmitting in high-definition in that market that relies on section 338 for carriage in that market.

New section 338(l)(3) creates the comparable authority for satellite carriers to carry programming in multiple formats as section 3410(a) of the bill creates for cable operators.

New section 338(l)(4) creates some exceptions to the general rule of new sections 338(l)(1) and 338(l)(2), just as section 3410(a) of the bill created some exceptions for cable operators. To ensure that satellite subscribers do not lose access to must-carry content, new section 338(l)(4)(A) requires a cable system to offer, in a format viewable on analog and digital televisions, the primary video stream and program-related content required to be carried by new section 338(l)(1). Unlike cable operators, however, satellite carriers already use set-top boxes to provide service to all their subscribers, and already carry all programming in a digital format. Indeed, in the case of analog broadcast programming, satellite operators first convert the programming to digital format at their local receive facility, and then use the set-top box to convert it back to analog-viewable format for their subscribers with analog televisions. Thus, to meet the requirements of new section 338(1)(4)(A), the satellite carrier will likely just carry the primary video stream and program-related content in standard-definition digital format and use the set-top box to convert the stream to an analog viewable format for subscribers with analog televisions.

Until January 1, 2014, new section 338(l)(4)(b) allows a satellite carrier to offer the primary video stream and program-related material of a local broadcast station relying on section 338 in standard-definition digital format in lieu of high-definition format. Beginning January 1, 2014, however, if the satellite carrier is offering any local broadcast content in a market in high-definition format, the satellite carrier will be required to carry in high-definition format the primary video stream and program related-format of all local broadcast stations relying on section 338 for carriage in the market.

Again, as the Committee emphasized above in its discussion of new section 614(b)(11)(C), the conversion of content from high-definition to standard-definition or analog format is meant only as a transitional measure. The vast majority of high-definition content is carried pursuant to retransmission consent agreements, and so is not subject to these must-carry provisions regarding conversion. Under retransmission consent agreements, the content will be carried in the format or formats required by the agreements. Moreover, only consumers with high-definition televisions will be able to watch high-definition content. Many, if not most, high-definition televisions will have digital tuners, especially in light of the tuner mandate, which the bill accelerates in section 3409(c). Consequently, these consumers will likely be able to watch high-definition content over the air even if a satellite carrier converts the content to standard-definition or analog format.

Sections 3410(c)(2)(4) of the bill creates conforming changes required by the addition of new section 338(l).

Section 3410(d) of the bill gives the FCC one year from enactment to implement section 3410.

Section 3411. Deployment of broadband wireless technologies.

Section 3411 requires the Commission to assess the necessity of rechannelizing the spectrum located between 767-773 MHz and 797-803 MHz to accommodate broadband applications. The Committee believes

that the propagation characteristics of the 700 MHz band present an ideal environment for broadband applications for public safety. The Committee also expects that, if the Commission rechannelizes public safety channels in order to permit the use of broadband applications, such use shall be in addition to, not to the exclusion of, applications based upon the existing 700 MHz band plan. The Committee expects the Commission to ensure that public safety operations based upon the existing 700 MHz band plan operate free from harmful interference.

Section 3412. Sense of Congress.

Section 3412 expresses a sense of Congress regarding concentration in the wireless communications industry, and the potential for wireless services using the 700 MHz band to provide consumers with another competitive alternative for broadband services.

Section 3413. Band plan revision required.

Section 3413 requires the Commission to reconfigure the band plan for Block B of the lower 700-megahertz band based on metropolitan statistical areas (MSAs) and rural statistical areas (RSAs).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

[Insert text here]

DISSENTING VIEWS

[Insert views here]